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January 15, 2020

Roxanne Rothschild
Executive Secretary
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570

Re: **Jurisdiction—Nonemployee Status of University and College Students Working in Connection with their Studies** (Docket ID: NLRB-2019-0002-0001; RIN 3142-AA15; FR Number: 2019-20510)

On behalf of the 1.7 million members of the American Federation of Teachers, including thousands of AFT-represented graduate workers at colleges and universities across the United States, I write today to strongly oppose the National Labor Relations Board's ("the Board") proposed rule to remove basic workplace protections under the National Labor Relations Act ("the Act") for graduate workers simply because, in addition to being workers, they are also students at the educational institutions where they work. The proposed rule impermissibly excludes graduate workers from the Act, is contrary to Supreme Court precedent, Board precedent, and the Act's purposes, and relies on outdated facts that do not reflect current realities in the higher education workforce.

The Board's attempt to remove graduate workers from coverage under the Act is egregious and devalues the incredible contributions of graduate workers. Graduate workers play a critical role in higher education. They conduct ground breaking research and dedicate hundreds of hours to teaching, grading, and reviewing student work. They often are the first line of guidance and support for undergraduate students who arrive on campus. Yet, they are often poorly compensated and lack the protections of other workers. Over the last few years, graduate workers have risen up to fight for their rights, to improve their pay and benefits, to fight against harassment

The **American Federation of Teachers** is a union of professionals that champions fairness; democracy; economic opportunity; and high-quality public education, healthcare and public services for our students, their families and our communities. We are committed to advancing these principles through community engagement, organizing, collective bargaining and political activism, and especially through the work our members do.

and discrimination, and to have a voice in their workplaces. This is the precise activity that the Board is supposed to protect. And yet, its proposed rule seeks to strip these workers of their employee status and leave them completely unprotected by federal law. The Board should abandon this attempt to curtail the rights of working people, and should, instead, abide by and enforce the law that it is charged to uphold.

I. The Board lacks the statutory authority to promulgate a rule excluding graduate workers from the definition of employee.

By this rulemaking, the Board seeks to erroneously *amend the Act* by issuing "a regulation establishing that students who perform any services for compensation . . . at a private college or university in connection with their studies are not 'employees' within the meaning of Section 2(3) of the Act." 84 FR 49691, 49691 (Sept. 23, 2019). The Board acts beyond its statutory authority in attempting to change the definition of employee codified in the statute by categorically excluding workers who unambiguously fall under the Acts protection.

Section 2(3) of the Act broadly states that "[t]he term 'employee' *shall include any employee. . . unless the Act. . .explicitly states otherwise*." (emphasis added). Employees who are explicitly excluded from the Act's coverage are "agricultural laborer[s], domestic serv[ants] of any family or person at their home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act [45 U.S.C. § 151 et seq.]."[1] Congress did not "explicitly state[]" that graduate workers were excluded from the Act's definition of employee. "Where Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent." *Andrus v. Glover Const. Co.*, 446 U.S. 608, 616-17 (1980). Here, the legislative history reflects an inclusive understanding of an "employee" as "someone who

[1] Governmental employers—and thereby their employees—are excluded from the Board's jurisdiction under Section 2(2) of the Act.

works for another for hire. . .and includes every[one] on a payroll." *NLRB v. Town & Country Elec., Inc.*, 515 U.S. 85, 91 (1995) (discussing congressional reports and floor statements conveying a broad understanding of the definition of employee) (internal citation omitted).

Thus, Congress reserved to itself the authority to categorically remove workers from the definition of employee by statutorily prohibiting further exclusions *unless the Act*, not the Board, explicitly states otherwise.[2] Because Congress has retained this authority, the Board cannot relegate to itself the power to legislate a change to the exclusions contained in § 2(3) through rulemaking.

The Board also lacks authority for its proposed rule because it is contrary to Supreme Court and Board precedent and the purposes of the Act. The Supreme Court has stated that "[t]he breadth of § 2(3)'s definition is striking: the Act squarely applies to 'any employee.' The only limitations are [the] specific exemptions." *Sur-Tan, Inc. v. NLRB*, 467 U.S. 883, 891 (1984). Indeed, the Court has noted that a broad reading of 'employee' under the Act is consistent with "[t]he ordinary dictionary definition of 'employee' [which] includes any 'person who works for another in return for financial or other compensation." *NLRB v. Town & Country Elec., Inc.*, 515 at 90 (internal citation omitted). The Board here ignores these accepted understandings of both the term employee generally and the term employee as it is meant in the context of the Act.

Furthermore, a broad reading of "employee" is "consistent with several of the Act's purposes, such as protecting 'the right of employees to organize for mutual aid without employer interference. . . and 'encouraging and protecting the collective-bargaining process.'" *Id.* at 91 (citing *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 798 (1945) and *Sure-Tan, Inc. v. NLRB*, *supra* at 892). By its own terms, the purpose of the Act is to "encourag[e] the practice and

[2] While Congress has reserved its authority to define "employee" in Section 2(3), it did provide in Section 14(c)(1) a mechanism for the Board to "decline to assert jurisdiction over any labor dispute involving any class or category of employers, where, in the opinion of the Board, the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction." However, here the Board is not declining jurisdiction under 14(c)(1) and is instead making a determination that graduate workers are not statutory employees. Regardless, the Board cannot decline jurisdiction under 14(c)(1) since it is clear that labor disputes at colleges and universities do have a substantial effect on commerce.

procedure of collective bargaining . . . by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection." 29 U.S.C. § 151. This is the express policy of the United States as declared by Congress in the Act and the Board must advance this purpose in its adjudicated decision and its rule-making agenda regardless of the political makeup of its members. And yet, despite this clear statement of national policy, which is contained in Section 1 of the statute that the Board has a duty to enforce, the Board's proposed rule strongly discourages the formation and maintenance of collective bargaining relationships as the Act envisions.

The Board's interpretation is also inconsistent with the common law. While it is true, as noted by the Board in the NPRM at 49694, that the Court in *Town & Country* gave the Board's construction of the term employee "considerable deference," the Supreme Court also explained in that case, and in others, that the term "employee" should be interpreted broadly, consistent with the common law. *NLRB v. Town & Country Elec., Inc.*, 515 at 94 (no issue in that case because Board definition of employee was consistent with the common law). To the extent the Board believes that the Act does not provide a clear definition of "employee," courts have noted that, in those circumstances, it must be inferred that Congress meant to incorporate the term's established meaning, "with reference to [the] common law of agency doctrine." *Columbia University*, 364 NLRB No. 90, *4-5 (August 23, 2016) (citing *Town & Country Electric*, supra, 516 U.S. at 94-95). And, the Board, with Supreme Court approval, has consistently interpreted the definition of employee in a way that aligns with the common law. *See Id.* and cases cited therein. In its proposed rule, the Board argues that the common-law definition of employee is "not conclusive" here because the Act "contemplates a primarily economic relationship," in contrast to the "primarily educational" purpose that they attribute to the work of student employees. NPRM at 49693. This is an innovation created by the Board out of whole cloth.

Despite the Board's characterization of this educational versus economic dichotomy as one of the founding tenets of the statute, it finds no home in the text or legislative history, and it fails to comport with the policy goal of encouraging collective bargaining. The common-law definition of employee has long served as a legitimate underpinning of the Board's interpretation of who is and is not an employee under the Act, and it cannot now depart from the widely understood and accepted definition without even a scintilla of support from the statute or a reasonable basis in fact or in law. Using this dearth of support to undermine the rights of graduate workers is nothing more than a thinly veiled attempt by the Board to stifle the successful and currently ongoing organizing campaigns by graduate workers nationwide, rather than doing the work of the Board by upholding the fundamental rights granted to these workers by the Act.

Further, the Board's reliance on *NLRB v. Bell Aerospace Co.*, 416 U.S. 267 (1974) is misplaced. As Member McFerran noted in dissent, that case does not offer support for the Board's present efforts to create an additional categorical exception to Section 2(3). The exception for managerial employees articulated in *Bell Aerospace* is based on the legislative history of the Act, in which the exclusion of managerial employees was specifically discussed and managerial employees were "regarded as so clearly outside the Act that no specific exclusionary provision was thought necessary." *Id.* at 283 (internal quotations and brackets omitted).

As for the Board's reliance on *Brevard Achievement Center* and *Toering Electric Co.*, these cases suffer from the same infirmity as the Board's proposed rule, i.e., impermissibly excluding workers under the Act based on irrelevant criteria. *See Brevard Achievement Center*, 342 NLRB 982 (2004) (disabled workers' participation in special training and counseling program rendered their services "primarily rehabilitative" despite the fact that they worked the same hours, performed the same tasks, and were paid the same wages as non-disabled employees); *Toering Electric Co.*, 351 NLRB 225 (2007) (adding requirement that union "salts" demonstrate they were "genuinely interested" in the job to show discriminatory failure to hire based on union affiliation).

We believe these cases were wrongly decided and do not provide a proper basis for the Board's proposed rule.

II. The Board's proposed rule is arbitrary and capricious because it based on outdated and/or inaccurate factual assumptions and policy concerns not supported by the record.

To begin, the Board's factual assertions are almost exclusively derived from the Board's *Brown University* decision. The Board erroneously asserts that graduate workers perform services for their educational institutions for primarily educational reasons and to help them cultivate relationships with faculty. They characterize the graduate worker/faculty relationship as only one of student and mentor and never an employee/employer relationship, and summarily deem this relationship inappropriate for collective-bargaining because it could advance the student's educational interests. They claim that these workers "spend a limited amount of time performing these additional duties," and that the funds received would be made available regardless of the number of hours spent teaching or doing research, likening graduate worker employment to financial aid.

This is simply not the reality of graduate worker employment at universities in the United States today, which is confirmed by the thousands of comments the Board has received in response to the NPRM from graduate workers across the country sharing their actual experiences working for colleges and universities. It is wholly unacceptable for the Board to base rulemaking on facts that are specific to circumstances as they may have existed at one university more than 16 years ago. The Board must do better than to simply rely on outdated facts gleaned from the limited circumstances of one case in the rulemaking process. It should be noted that, had the Board waited to be presented with a live controversy through which to consider these issues, it would have had the benefit of current facts illuminating the realities of graduate worker employment as they exist

now.[3] The Board also failed to hold a public hearing, as has been conducted during prior Board rulemakings, or meet with graduate workers who requested to do so.

The current work realities of the student employees who have chosen to organize with the AFT and other unions are far different than the sentimental and idealized vision of the academy articulated by the Board. The model of higher education has changed such that many universities are highly dependent on graduate workers to conduct the core work of teaching, researching, and grading. Gordon Lafer "Graduate Student Unions: Organizing in a Changed Academic Economy." Works and Days 41/42 vol. 21, nos. 1&2 (2003). These graduate workers are teaching classes, grading papers, operating lab equipment, performing research, and securing grant money for their institutions. They teach undergraduate and graduate courses and hold office hours to provide additional academic support and mentorship to *their* students. And, unfortunately, they experience exploitation, harassment, and abuse just like any other worker.

Indeed, the record in the NPRM reflects these realities. Students reported minimum hours requirements ranging from 15 to 40 hours per week along with actual working hours that often far exceed that threshold. For example:

- A graduate worker at Stanford University described the realities of the hours worked as part of his research assistant duties. He noted that he was appointed to work half time as a Research Assistant (i.e. 20 hours a week), with the remainder of his time to be used to focus on his studies. But he "often worked 60 hour weeks solely performing research," and on many occasions he worked "80 hour work weeks and 15 hour days." (Tim MacKenzie, comment NLRB-2019-0002-1872).

- A graduate worker at Baylor University works 60 hours a week performing computational fluid dynamics research, grading papers, and writing conference and journal articles. (Jordan Sakakeeny, Baylor University, comment NLRB-2019-0002-1363).

- A graduate worker at Yale University said, "my PI makes it clear to everyone that we are required to work at least 65hrs per week. And throughout these years I have to work 7 days a week, nonstop. I've never taken any national holidays and

[3] The AFT is very concerned that the Board proceeded through rulemaking rather than adjudication due to the recusal issues raised for Member Kaplan regarding this matter. The AFT hereby incorporates the motion for recusal filed on Oct. 17, 2019 (NLRB-2019-0002-1518).

> almost never have weekends." (Chang Liu, Yale University, comment NLRB-2019-0002-0534).

Many graduate workers commented that they were required to continue to perform research or teaching duties—i.e., remain employed by the university—in order to maintain their funding—i.e., continue to earn wages—during their course of study. Elisabeth Wilhelm, a graduate worker in the Germanic Studies Department at the University of Chicago, wrote that her pay "is contingent on the fulfillment of her teaching duties." (Elisabeth Wilhelm, University of Chicago, Comment NLRB-2019-0002-1238). Andrew Quinn said that "Our funding is specifically dependent on either performing research or teaching. Failure to do so would result in termination from the program, just like any paid employee." (Andrew Quinn, Comment NLRB-2019-0002-0452).

Graduate workers also submitted evidence regarding the financial struggle of completing a PhD program. Audrey Massmann from Brown University noted that she had graduate colleagues relying on SNAP and Medicaid to survive during graduate school. (Audrey Massmann, Brown University, Comment NLRB-2019-0002-0875). Another graduate worker from Boston University stated that he could not currently afford psychotherapy and physiological therapy for himself and his family. (Daniel Mendez, Boston University, Comment NLRB-2019-0002-1975).

Further, many of these workers fill out W-2 forms and they are taxed on what they earn. At Georgetown, graduate assistantships are provided on a semester by semester basis and involve an appointment as a Research Assistant, Teaching Assistant, or Teaching Associate. The graduate assistant is expected to assist in research, teaching or other matters of academic nature for 15 hours per week. Graduate workers serving as graduate assistants must fill out an I-9 form. Assistantships are reported each year by the university to both the recipient and to the United States Internal Revenue Service (IRS) as taxable income on Form W-2. *See Appendix A,* (Georgetown Offer Letter & Graduate Assistantships Information).

Graduate workers are also subject to harassment and discrimination in their work based on protected identities like gender, race, and sexual orientation and disability. Many graduate workers expressed that collective bargaining provided the only protection against this harassment and discrimination. For example, a graduate worker at Brown University stated:

> I need a contract because as a Middle Eastern worker and member of several marginalized communities, I have been subject to many instances of overt and subtle harassment, discrimination and in several cases even assault. Worries about legal repercussions mean that in my reports about these issues have gone unheard several times. The bargaining committee of my union at Brown is negotiating the independent grievance procedure with the administration that I need, but this ruling will make it more difficult for them to secure the improved procedures, procedures that often would cost the university money and decision-making power and force them to show greater accountability. (Babak Hemmatian, Brown University, Comment NLRB-2019-0002-0979).

A graduate worker at the University of Southern California said:

> For the most vulnerable of us, which includes those of color, disabled, queer and/or transgender, and other marginalized identities, we are especially susceptible to harsher punishments for speaking out by our employers. By reversing this decision to allow graduate students to organize, you are derailing so much work that graduate students have done to ensure that those of us most vulnerable have the option of collectively coming to peaceable solutions with our employers, especially when our livelihoods as graduate students are threatened. I do not want to be afraid to go into work everyday without the protections that graduate student labor rights would offer. Please do not take away this right to organize from us. (Muriel Leung, University of Southern California, Comment NLRB-2019-0002-0834).

And a graduate worker in Kansas City, Missouri said:

> I am writing to discuss my thoughts on how this rule would inhibit graduate workers right to negotiate fair procedures to address sexual harassment and other forms of discrimination. It would hinder graduate students like myself from having input in how cases of discrimination and especially sexual harassment are treated. This create[s] a dangerous, hostile and unsafe environment for graduate students, particularly women of color. I[t][sic] leave[s] some of the most vulnerable in higher education even more vulnerable. (Samaiyah Scott, Comment NLRB-2019-0002-1858).

Yet despite these struggles, the evidence in the record overwhelming demonstrates that the work of graduate employees is vital to the functioning of the educational institutions where they

are employed. For example, Donata Henry, a professor of Ecology and Evolutionary Biology at Tulane University said:

> As a faculty member, I rely heavily on the assistance of graduate students to provide instruction, mentor, and facilitate research experiences for our undergraduates. Graduate students do important work at my university. The teaching and research that my graduate students do every day is not optional. Without them, the university could not fulfill its research and educational goals. (Donata Henry, Tulane University, Comment NLRB-2019-0002-1970).

Cara Giovanetti, an undergrad at Princeton, explained:

> As an undergraduate student, I have interacted with graduate students in all of my classes in my department, and I can say with certainty that I would not have learned as much in the course, nor would the course have run smoothly, had it not been for the work they put into grading, running help and review sessions, and being available for student questions. These tasks are hard work that deserve to be recognized as such. (Cara Giovanetti, Princeton University, Comment NLRB-2019-0002-1691).

Jeremie Koenig, a graduate worker at Yale University, submitted the following:

> Contrary to the NLRB's assertion (§II.6), our RA work benefits Yale University: financially through overhead funding taken from research grants, as labor that is critical to fulfill its mission, and by maintaining its profile as an institution (Yale often features the work of RAs on its public relations website http://news.yale.edu). Our work also benefits our faculty advisers, many of whom rely on RAs to carry out their research programmes, assemble a solid publication record, and apply for research grants. Because a PhD degree and recommendation letters from established researchers are indispensable to pursue a career in academia, PhD students have very little power when confronted with arbitrary administrative decisions or unreasonable expectations from our supervisors as RAs and TAs. (Jeremie Koenig, Yale University, Comment NLRB-2019-0002-0627).

As the record in this rulemaking makes clear, times have changed, and the old tropes that the Board has used in the past to minimize the economic aspects of the working relationship between graduate workers and their employing educational institutions simply don't apply.

In addition, the record clearly indicates that universities have different policies as to how they structure their relationships with graduate workers—including hiring, firing, compensation, and the provision of benefits. Yet the Board failed to consider these differences and how they could affect the balance between educational and economic relationships. The Board also fails to

provide a workable standard for what constitutes a "student worker." The Board proposed that workers who are "working in connection with their studies" shall no longer be considered employees under the Act. The Board does not, however, explain why it created this particular standard, any alternatives it considered to this standard, or how this standard would be applied in practice.

Further, the policy harms that the Board purports to address through the current rulemaking are not supported in the record. The Board attempts to paint a picture in which collective-bargaining by graduate workers has upended the higher education system and destroyed academic freedom, but these concerns lack support in the Board's proposal and in reality. The Board asserts that the faculty-student worker relationship is inappropriate for bargaining because it is focused on mentorship and learning rather than employment. It predicts intrusions on the "domain of academic decision making" through collective bargaining that imperil academic freedom.

The Board's concerns over the mentoring or educational relationships between faculty and student employees are ill-formed and misunderstand the work that graduate employees do. The record contains comments from faculty members, many of whom are themselves union-represented employees, who support the unionization of graduate workers and who do not see collective bargaining as an impediment to mentorship. And, to the contrary, there are undergraduate students on record giving thanks for the academic assistance and mentorship they receive from graduate employees.

But even if some faculty members are uncomfortable with the fact that their graduate teaching assistant is also a union member, that is not the test for deciding whether a category of workers deserves the statutory protections Congress intended them to have under the Act. Rather, the Act was meant to address the imbalance of power between employers and employees, not to codify employer discomfort with protected concerted activity and unionization into law.

Furthermore, the Board's imagined concern over the faculty-graduate worker relationship assumes that most graduate employees are working under the supervision of faculty within their academic field, which is not the case. Graduate workers often teach or perform other services that are partly or entirely unrelated to their chosen field of study. And, as noted above, there is no reason why a mentoring relationship cannot exist concurrently with a collective-bargaining relationship, just as both exist in the primary educational sphere and in most other unionized workplaces.

The Board's concerns about collective bargaining intrusions into decision-making that is generally the purview of management is not unique to the educational sphere. As an initial matter, no one can point to a graduate employee collective bargaining agreement that actually infringes upon academic freedom, because no graduate employee collective bargaining agreement does this. Rather, these collective-bargaining agreements contain exactly what you would expect, protections for workers directly related to their terms of employment. As Member McFerran aptly remarked in dissent, "evidence from contemporary bargaining shows that student employees are not trying to alter aspects of their own educational experience, nor to exert control over academic matters." NPRM at 49697.

The AFT represents graduate workers in the public sector and has successfully bargained collective agreements which have created significant benefit for both graduate workers and universities, without infringing upon anyone's academic freedom. *See Appendix B* (Collective Bargaining Agreements) (filed as a separate comment). Such bargaining is well established, well-studied, and has resulted in productive collaborations. *See Appendix C* (National Center for the Study of Collective Bargaining in Higher Education and the Professions, Proceedings 1973-2019) (filed as a separate comment). Faculty unions and associations have continually weighed in opposing the Board's thesis that graduate worker unions interfere with academic freedom, *see Appendix D* (AAUP brief in Columbia), and the record in this rulemaking is nearly unanimous on this point. *See, e.g.*, Modern Language Association Comment NLRB-2019-0002-10276

("Graduate students should be free to organize as workers to make sure they have the working conditions necessary to do the work that allows our research universities to function."); American Historical Association Comment NLRB-2019-0002-0924 ("Our association supports the right of all historians, including graduate students, to organize and join unions or other collective bargaining units and engage in collective bargaining if they choose to do so."); American Philosophical Association Comment NLRB-2019-0002-1867 ("Whether unionization will best serve their employment interests and educational objectives and values is something that faculty and graduate students should be entitled to decide for themselves."); Marilynn Johnson , Professor of History, Boston College Comment NLRB-2019-0002-0398 ("As a tenured faculty member, I strongly support the right of graduate employees to organize and be represented by a union. Working conditions have been very unstable for these employees, and a union workplace would establish baseline pay, benefits and working conditions. This would improve the relationship between faculty, administration, and graduate workers, making a better workplace for all."). In fact, academic freedom is promoted when university workers have the right to speak without fear of retaliation, and this applies to graduate workers as well as faculty. *See, e.g., AAUP brief in Columbia, supra* (AAUP 1940 Statement of Principles on Academic Freedom and Tenure, issued jointly with the Association of American Colleges, which recognizes that faculty and graduate students both are entitled to the protections of academic freedom); Judith Hoeller, Graduate Assistant at Yale University, Comment NLRB-2019-0002-0741 ("The lack of a contract—and relatedly, the lack of the ability for graduates to bargain about their formal relationship with the university—imperils the protection of academic freedoms because academic freedom builds upon individual freedom and welfare, which have an economic basis.")

Thus, the specter of graduate employee unions demanding control over issues related to academic freedoms and the creation of unsolvable problems under current law is nothing more than a bogeyman. Even if we assume that a graduate employee union will make such a demand,

there are well-established methods of dealing with the issue. For starters, the educational institution can, through the collective-bargaining process itself, negotiate a management rights clause or other contract language in order to preserve its right to make unilateral decisions regarding certain subjects. Furthermore, and regardless of industry, not all subjects are mandatory, and the Board has the authority to decide which issues fall within mandatory and permissive subjects of bargaining on a case by case basis should one of the parties to a negotiation seek assistance by filing an unfair labor practice charge. Unfortunately, the Board did not even analyze or consider this alternative in its rulemaking proposal.

The Board also failed to analyze the severe disruptive effects its rule will have on ongoing bargaining relationships. It glibly notes that much of the progress made in the private sector for graduate workers has been made through voluntary recognition. But as Member McFerran points out, the Board's establishment of legal procedures for recognition and bargaining has played an important role in establishing the conditions to make such voluntary recognition agreements possible. And, since the Trump appointed Board members began signaling their impending change to the rule, additional strikes and unrest on campuses have resulted. If the Board implements its new rule, graduate workers will have little choice but to resort to further escalating direct action tactics to obtain the rights improperly stripped from them.

III. The Board improperly analyzes the proposed rule's scope & effect under the Regulatory Flexibility Act.

The Board's Regulatory Flexibility Analysis is unreasonable and unreasonably explained. The Board estimates that the proposed rule will cost $71.08 for each college, university, and labor union based on the need to review and understand the rule. The Board also estimates that the rule could conserve resources for small employers and labor unions because there would not be organizing campaigns or election-related litigation. In fact, small graduate worker unions, such as the Georgetown Alliance of Graduate Employees (GAGE) or the Stand Up for Graduate Student

Employees (SUGSE) at Brown University, could potentially lose everything as a result of the rule. It could also severely disrupt the ongoing bargaining relationships between the parties, resulting in major losses to the union's members. The Economic Policy Institute estimates that there are roughly 575,000 graduate assistants working at private universities and that 1.5 million graduate students who stand to lose the right to collective bargaining if the proposed rule goes into effect. Celine McNicholas, Margaret Poydok, and Julia Wolfe, *Graduate Student Workers' Rights to Unionize are Threatened by Trump Administration Proposal*, Economic Policy Institute, December 2019. Thus, the Board's estimate of $71.08 is a gross underestimate of the costs to graduate students and their unions.

IV. Conclusion

The Board lacks the authority to categorically strip graduate employees—or any other group of employees not already designated by Congress in the Act's exceptions—of their statutory rights under the Act. And, even if it were authorized to do so, its current proposal is antithetical to the purposes of the Act, contrary to national labor policy, inconsistent with Supreme Court and Board precedent, and based on outdated and incorrect factual assumptions. For all of these reasons, I respectfully submit that the Board should abandon this ill-conceived and ill-informed attempt at rulemaking and focus on more honestly and zealously effectuating the Act as it was enacted by Congress.

Sincerely,

Randi Weingarten
President